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A.L.R. Index, Excise Taxes
A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
A.L.R. Index, Tax Sales
A.L.R. Index, Tobacco and Tobacco Products
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Forms

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XXXII. In General

§ 519. Recording and registration taxes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2102, 2218, 2533

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 262 (Complaint, petition, or declaration—Against county recorder and municipality—To enjoin exaction of municipal realty transfer stamp tax on realty situated outside municipality)

A recordation tax is an excise on the privilege of using the recording offices of the clerks of the circuit court to perfect security interests.[1] The purpose of a mortgage registration tax is to collect revenue before the document is used for recording purposes or foreclosure.[2]

A conveyance to a separate and distinct entity for consideration is generally subject to recordation and transfer taxes.[3] The transfer to the United States of privately owned real property as a result of a condemnation may constitute a transfer within the scope of a provision levying a tax on all transfers of a fee simple interest in real property.[4] A foreclosure sale at which the mortgagee is the sole bidder, followed by the execution and recording of a deed by said mortgagee to himself or herself, all pursuant to a statutory power of sale, constitutes a sale and transfer of real estate and any interest therein under a real property transfer taxation statute.[5]

Transfer taxes are inapplicable to a written instrument which does not convey title to the property in question,[6] and the record title is not dispositive as to whether the requirements for a claimed exemption from recordation and transfer taxes are satisfied.[7] The recording of more than one instrument evidencing the same indebtedness does not result in the imposition of a transfer tax on each instrument.[8] The transfer of realty from a corporation to stockholders in liquidation of the corporation is not a taxable event for purposes of a realty transfer tax.[9] The tax on gains resulting from the sale of real property is not a

"transfer tax" under the statute requiring the condemnor to reimburse the condemnee for incidental expenses relating to the condemnation of such property.[10]

In order for an instrument that creates a security interest to be exempt from state recordation tax as a "supplemental instrument," it must supplement an instrument creating a security interest previously recorded in the state. Where no recordation tax has previously been paid in the state, the recording of an instrument that supplements an instrument previously recorded out of state does not qualify for a supplemental instrument exemption to the recordation tax.[11]

CUMULATIVE SUPPLEMENT

Cases:

A recordation tax is an "excise tax" imposed upon the privilege of recording the deed. West's Ann.Md.Code, Tax–Property, § 12–108. Maryland Economic Development Corp. v. Montgomery County, 431 Md. 189, 64 A.3d 478 (2013).

Taxable "transfer" of residential housing cooperative complex did not occur when residential housing cooperative corporation amended its certificate of incorporation as a part of its voluntary dissolution, reconstitution, and termination of participation in Mitchell–Lama affordable housing program, and thus city improperly imposed real property transfer tax on corporation; upon amending its certificate of incorporation, corporation remained the same entity, although it was relieved of various restrictions previously imposed upon it by the Mitchell–Lama housing program. McKinney's Tax Law § 1201(b); McKinney's Private Housing Finance Law § 10 et seq.; New York City Administrative Code, § 11–2102(a). Trump Village Section 3, Inc. v. City of New York, 952 N.Y.S.2d 65 (App. Div. 2d Dep't 2012).

[END OF SUPPLEMENT]

Footnotes

1 Prince George's County v. Brown, 334 Md. 650, 640 A.2d 1142 (1994).

2 Greer v. Kooiker, 312 Minn. 499, 253 N.W.2d 133 (1977).

3 Scott v. Clerk of Circuit Court for Frederick County, 112 Md. App. 234, 684 A.2d 896 (1996).

4 Vournas v. Montgomery County, 300 Md. 123, 476 A.2d 705 (1984).

5 Apte v. Department of Revenue Administration, 121 N.H. 1045, 437 A.2d 319 (1981).

6 State, Dept. of Revenue v. Swinscoe, 376 So. 2d 1 (Fla. 1979); Clerk of Circuit Court for Dorchester County v. Chesapeake Bay Shores, Inc., 271 Md. 627, 319 A.2d 811 (1974).

7 Wildwood Medical Center, L.L.C. v. Montgomery County, 405 Md. 489, 954 A.2d 457 (2008).

8 Health and Educational Facilities Bd. of Shelby County v. King, 678 S.W.2d 14 (Tenn. 1984).

9 Baehr Bros. v. Com., 487 Pa. 233, 409 A.2d 326 (1979).

10 Heller v. State, 81 N.Y.2d 60, 595 N.Y.S.2d 731, 611 N.E.2d 770 (1993).

11 Prince George's County v. Brown, 334 Md. 650, 640 A.2d 1142 (1994).

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XXXII. In General

§ 520. Production and severance taxes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2248, 2249

A state statute prohibiting oil and gas producers from passing on a severance tax increase to their purchasers does not violate the Equal Protection Clause because the prohibition bears a rational relationship to the State's legitimate purpose of protecting consumers from excessive prices.[1] A severance tax is not invalid because it is imposed on those mining ores on their own account but not upon independent contractors mining ore owned by others,[2] because it is limited to the production of crude petroleum,[3] or because, in the case of a severance tax on the production of oil, the amount of the imposition is graduated according to the petrochemical properties of the oil produced.[4]

Excise taxes are sometimes imposed upon the "production" of electric power.[5] A statute taxing the production of electric energy by water or steam power, but exempting production by the use of oil or internal combustion engines, does not constitute arbitrary discrimination.[6] The production or generation of electric energy within a state is purely an intrastate business subject to state control, and thus, its taxation does not create an unconstitutional burden on interstate commerce when imposed with respect to electricity transmitted to consumers in another state.[7]

Even though a Native American tribe imposes severance and privilege taxes on the production of oil and gas from its wells by a nontribal lessee, federal law does not preempt, either expressly or by implication, the imposition of some additional severance taxes, on the same production of oil and gas, by the State in which the reservation is located.[8] A tribe's imposition of a severance tax on any oil and natural gas removed from tribal lands, including oil and gas extracted and produced pursuant to long-term leases previously signed with the tribe and on which the tribe receives royalties, does not violate the Commerce Clause of the United States Constitution where the tax does not treat minerals transported away from the reservation differently than it treats minerals that might be sold on the reservation.[9]

Footnotes

[1] Exxon Corp. v. Eagerton, 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983).

[2] Oliver Iron Min. Co. v. Lord, 262 U.S. 172, 43 S. Ct. 526, 67 L. Ed. 929 (1923) (disapproved of on other grounds by, Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981)).

[3] Swiss Oil Corporation v. Shanks, 273 U.S. 407, 47 S. Ct. 393, 71 L. Ed. 709 (1927).

[4] Ohio Oil Co. v. Conway, 281 U.S. 146, 50 S. Ct. 310, 74 L. Ed. 775 (1930).

[5] Broad River Power Co. v. Query, 288 U.S. 178, 53 S. Ct. 326, 77 L. Ed. 685 (1933); Utah Power & Light Co. v. Pfost, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

[6] Broad River Power Co. v. Query, 288 U.S. 178, 53 S. Ct. 326, 77 L. Ed. 685 (1933).

[7] Utah Power & Light Co. v. Pfost, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

[8] Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

[9] Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

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XXXII. In General

§ 521. Cigarette and tobacco taxes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3629, 3679

A.L.R. Library

Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products, 46 A.L.R.3d 1342

A State may impose a cigarette excise tax on the sale, use, consumption, handling, possession, or distribution of cigarettes within the state.[1] State cigarette sales taxes are directed at the retail consumer.[2] The legal incidence of the tax is upon the person who first sells, uses, consumes, handles, or distributes cigarettes in the state and will fall upon the party who first brings the cigarettes into the state and does any of the enumerated acts; thereafter, the amount paid for cigarette stamps becomes a part of the price of the cigarettes, just as other costs of doing business.[3]

Cigarette tax statutes may make classifications and exemptions as long as they are reasonable,[4] do not place an undue burden on interstate commerce,[5] and do not offend the constitutional requirements of due process[6] and equal protection.[7] A state statute repealing an excise tax exemption for cigarettes purchased by inmates housed in state correctional institutions is constitutional even if the same excise tax exemption is not repealed with respect to cigarettes sold to persons residing in other types of state facilities where the legislature could reasonably have concluded that facility inmates are not similarly situated with respect to inmates and patients in other state institutions and where the tax can enhance public health by adding economic incentive to reducing inmates' consumption of tobacco.[8] In contrast, a classification between gummed and ungummed cigarette papers in a statute imposing a substantially higher privilege tax on gummed papers in order to impede the marijuana trade is not based upon a real and substantial distinction and is unconstitutional as violative of equal protection in that gummed and ungummed cigarette papers are functionally interchangeable and virtually identical in appearance.[9]

CUMULATIVE SUPPLEMENT

Cases:

Under the Illinois Cigarette Tax Act (CTA), payment of the tax that is imposed on any person engaged in business as a retailer of cigarettes in Illinois is evidenced by a stamp affixed to each package of cigarettes. 35 Ill. Comp. Stat. Ann. 130/2(a), 130/2(b), 130/3. In re Karim, 612 B.R. 904 (Bankr. N.D. Ill. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).
A tax statute, requiring that a tobacco tax on tobacco purchased by a taxpayer, a distributor of tobacco products to retail stores, be calculated according to the price that the taxpayer actually paid to the sales company associated with the tobacco manufacturer, rather than according to the manufacturer's list price, did not discriminate against interstate commerce and thus did not violate the Commerce Clause because all tobacco products were taxed at the same rate regardless of their origin. McLane Minnesota, Inc. v. Commissioner of Revenue, 773 N.W.2d 289 (Minn. 2009).

2 Confederated Salish and Kootenai Tribes of Flathead Reservation, Montana ("Tribes'') v. Moe, In and For Missoula County, Montana, 392 F. Supp. 1297 (D. Mont. 1974), judgment aff'd, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976) and (disapproved of on other grounds by, White Mountain Apache Tribe v. Williams, 798 F.2d 1205 (9th Cir. 1985)).

3 Canteen Service, Inc. v. State, 83 Wash. 2d 761, 522 P.2d 847 (1974).

4 People v. Cook, 34 N.Y.2d 100, 356 N.Y.S.2d 259, 312 N.E.2d 452 (1974).

5 State v. Bruce, 564 S.W.2d 898 (Mo. 1978).

6 Calvert v. Zanes-Ewalt Warehouse, Inc., 502 S.W.2d 689 (Tex. 1973).

7 S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 329 N.E.2d 213 (1975).

8 Johnson v. Meehan, 225 Conn. 528, 626 A.2d 244 (1993).

9 Robert Burton Associates, Ltd. v. Eagerton, 432 So. 2d 1267 (Ala. 1983).

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XXXII. In General

§ 522. Cigarette and tobacco taxes—Tribal taxation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3629, 3679

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 260 (Complaint, petition, or declaration—For declaratory and injunctive relief from sales tax levy—Taxes assessed on non-taxable transaction—Cigarette sales taxes wrongfully assessed by state agency against sales to American Indians reservations)

Native American tribes may impose their own cigarette taxes on tobacco sales or otherwise earn revenues from the tribal business by participating in the cigarette enterprise at the wholesale or retail level.[1] Where there is no direct conflict between the state and tribal tax schemes, each government is free to impose its taxes without ousting the other.[2] Thus, a state cigarette sales tax is inapplicable to cigarette sales by Native Americans to Native Americans on reservations but may be collected from nonmembers purchasing cigarettes at tribal smokeshops if the collection of taxes on such sales neither imposes a burden on Native Americans nor infringes on tribal self-government.[3] The immunity of Native Americans from state-imposed cigarette taxes with respect to sales of cigarettes by Native Americans to each other on the reservation and immunity from tax on personal property held by tribal members on the reservation does not constitute an invidious discrimination against nontribal members on the basis of race.[4]

Footnotes

[1] Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980); Confederated Salish and Kootenai Tribes of Flathead Reservation, Montana (''Tribes'') v.

Moe, In and For Missoula County, Montana, 392 F. Supp. 1297 (D. Mont. 1974), judgment aff'd, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976) and (disapproved of on other grounds by, White Mountain Apache Tribe v. Williams, 798 F.2d 1205 (9th Cir. 1985)).

[2] Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).

[3] Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).

[4] Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976).

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XXXII. In General

§ 523. Sale of cigarettes or smokeless tobacco products via Internet or other mail order sales

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3629, 3679

Under federal law, any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a state, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers cigarettes or smokeless tobacco for such a sale, transfer, or shipment, must file specified statements and reports with the Attorney General of the United States and with the tobacco tax administrators of the state and place into which such shipment is made or in which such advertisement or offer is disseminated.[1] Delivery sellers are required to comply with specified shipping requirements, recordkeeping requirements, and all state, local, tribal, and other laws generally applicable to the sale of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific state and place, including laws imposing excise taxes and license and tax-stamping requirements and specified tax collection requirements.[2]

Definitions:

A "delivery seller" is a person who makes a delivery sale.[3] A "delivery sale" means any sale of cigarettes or smokeless tobacco to a consumer if (1) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or (2) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.[4]

Footnotes

[1] 15 U.S.C.A. § 376.

[2] 15 U.S.C.A. § 376a.
As to the penalties for violating these provisions, see 15 U.S.C.A. § 377.
As to the provisions for enforcement, see 15 U.S.C.A. § 378.

[3] 15 U.S.C.A. § 375(6).

[4] 15 U.S.C.A. § 375(5).

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XXXIII. Gasoline Taxes

A. In General

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West's Key Number Digest, Taxation 3606

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A. In General

§ 524. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3606

The United States has granted the states the right to exercise limited jurisdiction in taxing the use or sale of gasoline or other motor vehicle fuels within federal areas in exactly the same manner as if those areas did not exist except in cases where the gasoline is to be used exclusively by the United States[1] or where such tax is preempted by federal law.[2] A state sales tax remains valid even if liability for a federal excise tax on gasoline arises simultaneously with a state sales tax computed upon the gross proceeds of the sale of gasoline without a deduction for the federal excise tax.[3] Thus, a State may impose a fuel use tax on fuel consumed on inland waterways simultaneously with a federal excise tax on fuel consumption in commercial waterway traffic.[4]

Footnotes

1 Matter of State Motor Fuel Tax Liability of A. G. E. Corp., 273 N.W.2d 737 (S.D. 1978) (referring to the Hayden-Cartwright Act, 4 U.S.C.A. § 104, and the Buck Act, 4 U.S.C.A. § 105).

2 White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980).

3 Gurley v. Rhoden, 421 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

4 Hartley Marine Corp. v. Mierke, 196 W. Va. 669, 474 S.E.2d 599 (1996).

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XXXIII. Gasoline Taxes

A. In General

§ 525. Nature of tax

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3606

Generally, the courts have construed gasoline taxes based upon the gallonage or other quantity of gasoline sold, used, or possessed as excise taxes on the sale, use, or possession of gasoline and not as a property tax.[1] Federal courts are bound by the construction placed by state courts on a state gasoline tax statute as imposing an excise tax rather than a charge for the privilege of using the highways.[2] A state court's finding as to the operating incidence of a tax is entitled to great weight in determining the natural effect of a state tax statute, and if such a finding is consistent with the statute's reasonable interpretation, it is deemed conclusive.[3] Thus, once the highest court of a state has construed the gasoline tax so as to remove any uncertainty, the United States Supreme Court is precluded from finding the tax uncertain.[4]

The use to which gasoline or other fuel may be put by the purchaser is not a factor in determining the nature of the tax.[5] However, some statutes labeled as taxes are not taxes but a toll, a payment required for the use of the facilities which the State may furnish or not, as it sees fit, or a recompense exacted for the use of state highways.[6]

Footnotes

1 Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934); Miller v. People, 76 Colo. 157, 230 P. 603, 39 A.L.R. 269 (1924); Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699 (1930); Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939); Central Vermont Ry. v. Campbell, 108 Vt. 510, 192 A. 197, 111 A.L.R. 175 (1937).
An excise tax, like Alabama's sales and use tax, which is imposed on railroads when they purchase or consume diesel fuel, is "another tax" under the catch-all subsection of the Railroad Revitalization and Regulatory Reform Act (4-R Act) provision, 49 U.S.C.A. § 11501(b)(4), barring states and localities from engaging in four forms of discriminatory taxation. CSX Transp., Inc. v. Alabama Dept. of Revenue, 131 S. Ct. 1101, 179 L. Ed. 2d 37 (2011).

[2] Bingaman v. Golden Eagle Western Lines, 297 U.S. 626, 56 S. Ct. 624, 80 L. Ed. 928 (1936).

[3] American Oil Co. v. Neill, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 (1965).

[4] Pierce Oil Corporation v. Hopkins, 264 U.S. 137, 44 S. Ct. 251, 68 L. Ed. 593 (1924).

[5] George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), aff'd, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931).

[6] Tirrell v. Johnston, 86 N.H. 530, 171 A. 641 (1934), aff'd, 293 U.S. 533, 55 S. Ct. 238, 79 L. Ed. 641 (1934).

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XXXIII. Gasoline Taxes

B. Validity

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West's Key Number Digest, Taxation 3628, 3684

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XXXIII. Gasoline Taxes

B. Validity

§ 526. Generally

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West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

In determining the validity of gasoline taxes with reference to United States constitutional rights, the substance of the tax law, rather than the form or the name by which the tax is designated, controls.[1] The court looks not to the form of the taxing scheme, or to the characterization of it either by the legislature or by the state courts, but to the substance of the tax and its application and enforcement by the State.[2] The fact that a fuel flowage "fee" is called a "fee," rather than a "tax," is not the decisive factor in ascertaining whether such fee is valid.[3]

A state sales tax remains valid even if liability for a federal excise tax on gasoline arises simultaneously with a state sales tax computed upon the gross proceeds of the sale of gasoline without a deduction for the federal excise tax.[4] Thus, a State may impose a fuel use tax on fuel consumed on inland waterways simultaneously with a federal excise tax on fuel consumption in commercial waterway traffic.[5]

CUMULATIVE SUPPLEMENT

Cases:

Alabama's fuel-excise tax could not justify exemption of interstate water carriers, but not rail carriers, from sales and use taxes on purchase and consumption of diesel fuel under Railroad Revitalization and Regulatory Reform Act, where only motor carriers, not water carriers, paid fuel-excise tax. 49 U.S.C.A. § 11501(b)(4); Code 1975, §§ 40–23–2(1), 40–23–61(a). Alabama Dept. of Revenue v. CSX Transp., Inc., 135 S. Ct. 1136 (2015).

[END OF SUPPLEMENT]

Footnotes

1 American Oil Co. v. Neill, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 (1965); Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932); George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), aff'd, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931).
As to the effect of federal and state constitutions, see § 531.

2 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932); George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), aff'd, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931); Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44, 411 N.Y.S.2d 41 (3d Dep't 1978).

3 Executive Aircraft Consulting, Inc. v. City of Newton, 252 Kan. 421, 845 P.2d 57 (1993).

4 Gurley v. Rhoden, 421 U.S. 200, 95 S. Ct. 1605, 44 L. Ed. 2d 110 (1975).

5 Hartley Marine Corp. v. Mierke, 196 W. Va. 669, 474 S.E.2d 599 (1996).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIII. Gasoline Taxes

B. Validity

§ 527. Infringement on interstate commerce

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

A.L.R. Library

State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421

One of the objections most frequently raised to the validity of gasoline tax statutes is that they violate the Interstate Commerce Clause of the United States Constitution when applied to gasoline brought into the state from another state.[1] Gasoline shipped in interstate commerce that comes to rest in the state may be the subject of a state gasoline excise tax provided that other gasoline is equally taxed and no unjust discrimination is made because of its origin[2] so long as there is no local taxation of gasoline, which is actually moving in interstate or foreign commerce.[3]

To render a taxing statute invalid on the theory of discrimination against interstate commerce, there must be a substantial distinction and a real injury, and the one who claims that the tax discriminates against transactions in interstate commerce has the burden of showing that fact.[4] If the State distributes the gasoline taxing requirements in several statutes, the several statutes must be read together to determine whether they discriminate with respect to gasoline which has been shipped into the state in interstate commerce for use in such state.[5] An act discriminates against interstate commerce in favor of local interests by drawing a distinction between qualifying and not qualifying for a tax benefit on the basis of the origin of the taxable product.[6]

When a shipment from outside the state has come to rest within the state, the tax may be imposed either upon the sale of gasoline in domestic trade[7] or upon its use.[8] Such excise taxes may be levied upon gasoline and other petroleum products

shipped into the state for use in the importer's own business and upon the importer's own premises, without imposing a direct burden upon interstate commerce.[9]

The sale or use of oil or gasoline after the original container has been broken or opened, or in smaller quantities than contained in such container, may be subjected to a nondiscriminatory tax.[10] The fact that gasoline or another fuel product remains in the original package or container in which it has been shipped into the state does not prevent the State from imposing its gasoline tax if the interstate transportation has ended.[11]

In accord with the general rule that property brought into the state for transshipment is subject to local taxation when its continuous movement in interstate commerce has ceased and it has come to rest in the state for purposes of the owner, and from causes other than the exigencies or necessities of transportation, gasoline brought into the state from another state, even though intended for transshipment to other states, is subject to the taxing power of the State the same as gas and oil intended for local distribution and sale if it has come to rest within the state.[12] Moreover, the fact that one may be at times required to pay a tax on oil or gasoline or other fuel imported which is thereafter exported, and even the fact that one may be required to report and pay a tax on shipments into the state direct to dealers who are customers, does not unconstitutionally burden interstate commerce when upon the exportation of the oil, gasoline, or the like, the dealer is given credit for the amount of the tax.[13]

Footnotes

1 Western Oil Refining Co. v. Lipscomb, 244 U.S. 346, 37 S. Ct. 623, 61 L. Ed. 1181 (1917).

2 Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934); Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191 (1933); Archer Daniels Midland Co. v. State, 690 P.2d 177 (Colo. 1984); Central Vermont Ry. v. Campbell, 108 Vt. 510, 192 A. 197, 111 A.L.R. 175 (1937); Hartley Marine Corp. v. Mierke, 196 W. Va. 669, 474 S.E.2d 599 (1996).

3 Wardair Canada, Inc. v. Florida Dept. of Revenue, 477 U.S. 1, 106 S. Ct. 2369, 91 L. Ed. 2d 1 (1986); Helson v. Commonwealth of Kentucky, by Board, 279 U.S. 245, 49 S. Ct. 279, 73 L. Ed. 683 (1929); Carson Petroleum Co. v. Vial, 279 U.S. 95, 49 S. Ct. 292, 73 L. Ed. 626 (1929); Pledger v. Arkla, Inc., 309 Ark. 10, 827 S.W.2d 126 (1992).

4 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932).

5 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932).

6 Russell Stewart Oil Co. v. State, 124 Ill. 2d 116, 124 Ill. Dec. 503, 529 N.E.2d 484 (1988).

7 Hart Refineries v. Montana, 278 U.S. 584, 49 S. Ct. 189, 73 L. Ed. 519 (1929); Hart Refineries v. Harmon, 278 U.S. 499, 49 S. Ct. 188, 73 L. Ed. 475 (1929).

8 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932); Bowman v. Continental Oil Co., 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921).

9 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932); Bowman v. Continental Oil Co., 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921); George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), aff'd, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931).

10 Bowman v. Continental Oil Co., 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921); Askren v. Continental Oil Co., 252 U.S. 444, 40 S. Ct. 355, 64 L. Ed. 654 (1920).

11 Wiloil Corporation v. Commonwealth, 294 U.S. 169, 55 S. Ct. 358, 79 L. Ed. 838 (1935); Sonneborn Bros. v. Cureton, 262 U.S. 506, 43 S. Ct. 643, 67 L. Ed. 1095 (1923).

12 Standard Oil Co. v. Graves, 249 U.S. 389, 39 S. Ct. 320, 63 L. Ed. 662 (1919); General Oil Co. v. Crain, 209 U.S. 211, 28 S. Ct. 475, 52 L. Ed. 754 (1908).

[13] Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIII. Gasoline Taxes

B. Validity

§ 528. Gasoline used to power interstate transportation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

A tax on gasoline sold, used, or stored in the state does not impose a burden upon interstate commerce merely because it may be or is used as an instrumentality of interstate commerce in furnishing motive power therefor whereas if the tax is directly on the use of gasoline in interstate commerce, as on use in interstate transportation, it does violate the Commerce Clause.[1] A nondiscriminatory tax on the sale of gasoline for use by air transport lines in conducting interstate transportation across the state is valid because the mere purchase of supplies for conducting an interstate business does not make the sale immune from a nondiscriminating state tax on intrastate dealers.[2] A State may validly tax the "use" to which gasoline is put in withdrawing it from storage within the state and placing it in the tanks of planes, buses, railroad locomotives, and the like notwithstanding that its ultimate function is to generate motive power for carrying on interstate commerce; when the exercise of the powers taxed, the storage and withdrawal from storage, is complete before the interstate commerce begins, the burden of the tax is too indirect and remote from the function of interstate commerce to transgress constitutional limitations.[3] The fact that some of the gasoline withdrawn from storage is to be used without the state, and again becomes a subject of interstate transportation, does not affect the power of the State to tax all of it before the transportation commences.[4]

CUMULATIVE SUPPLEMENT

Cases:

Under the International Fuel Tax Agreement (IFTA), an interstate motor carrier pays all its state fuel taxes quarterly to the base jurisdiction in which it registers as a licensee under the IFTA; the base jurisdiction then forwards the appropriate tax amounts to each individual state in which the motor carrier operates. Marco Petroleum Industries, Inc. v. Commissioner, New Hampshire Department of Safety, 117 A.3d 165 (N.H. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932); Eastern Air Transport v. South Carolina Tax Commission, 285 U.S. 147, 52 S. Ct. 340, 76 L. Ed. 673 (1932).

2 Edelman v. Boeing Air Transport, 289 U.S. 249, 53 S. Ct. 591, 77 L. Ed. 1155 (1933); Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191 (1933); Eastern Air Transport v. South Carolina Tax Commission, 285 U.S. 147, 52 S. Ct. 340, 76 L. Ed. 673 (1932).

3 Edelman v. Boeing Air Transport, 289 U.S. 249, 53 S. Ct. 591, 77 L. Ed. 1155 (1933); Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191 (1933).

4 Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191 (1933).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIII. Gasoline Taxes

B. Validity

§ 529. Sale to, or use by, federal government and federal instrumentalities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

A State may impose a nondiscriminatory gasoline tax on a nongovernmental entity for selling gasoline to the United States even if the economic burden of the tax falls upon the United States.[1] The federal government's sovereign immunity from state taxation does not prohibit a state tax on the business of storing gasoline, measured by the quantity of gasoline stored, where the tax is imposed on one storing gasoline owned by the federal government notwithstanding that the gasoline itself is exempt, by virtue of a federal statute, from state storage or use taxes.[2] The fact that, under state law, the federal government would be exempt from the state privilege tax on the business of storing gasoline, if the gasoline were stored in tanks rented by the federal government, does not bar the imposition of such tax where the gasoline is stored by a private contractor under a contract by which the federal government agrees to assume liability for all state taxes.[3]

Footnotes

1 State of Alabama v. King & Boozer, 314 U.S. 1, 62 S. Ct. 43, 86 L. Ed. 3, 140 A.L.R. 615 (1941).

2 Esso Standard Oil Co. v. Evans, 345 U.S. 495, 73 S. Ct. 800, 97 L. Ed. 1174 (1953).

3 Esso Standard Oil Co. v. Evans, 345 U.S. 495, 73 S. Ct. 800, 97 L. Ed. 1174 (1953).

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XXXIII. Gasoline Taxes

B. Validity

§ 530. Sale to, or use by, government contractor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

A State may impose an excise tax, measured by gallonage, on gasoline imported and used, which is consumed by a contractor with the United States in the performance of a contract for the construction of public works for the federal government,[1] including contracts made by the United States Department of the Interior.[2] In whatever respect the imposition of such tax may affect the federal government at all, it at most gives rise to a burden which is consequential and remote.[3]

Footnotes

1 Trinityfarm Const. Co. v. Grosjean, 291 U.S. 466, 54 S. Ct. 469, 78 L. Ed. 918 (1934).

2 Matter of State Motor Fuel Tax Liability of A. G. E. Corp., 273 N.W.2d 737 (S.D. 1978).

3 Trinityfarm Const. Co. v. Grosjean, 291 U.S. 466, 54 S. Ct. 469, 78 L. Ed. 918 (1934).

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XXXIII. Gasoline Taxes

B. Validity

§ 531. Effect of federal and state constitutions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

Gasoline tax statutes must comply with the due process and equal protection guaranties of the United States Constitution.[1] In such cases, the court looks to the fairness and reasonableness of the purposes of the statute, and to its practical operation, rather than to minute differences between its application in practice and the application of other taxing statutes to which it is complementary.[2]

Because motor fuel tax laws do not involve any "suspect" type of classification and are not enactments touching on fundamental constitutional rights, the constitutionality of such laws will be upheld by showing that the law has a rational basis.[3] Imposing a tax on entities who distribute petroleum products in a state, in order to create an insurance fund, is rationally related to the legitimate legislative goal of protecting the environment from leaky underground storage tanks.[4]

The constitutional guaranty of due process of law is not violated by a statute requiring the seller to collect a tax from purchasers of a certain amount per gallon and to account therefor to the state.[5] However, the imposition of a state gasoline excise tax on a gasoline dealer licensed in the taxing state is a denial of due process where the invitation, submission, and acceptance of bids for the contract of sale of the gasoline occurred outside the state; the delivery and passage of title occurred outside the state, although the purchaser arranged for the gasoline to be brought into the state from the place of delivery; and there was no indication that the company's other activities in the state contributed in any way to the procurement or performance of the contract.[6]

Statutes providing for the allocation and distribution of revenues from an excise tax on the sale of motor vehicle fuels to municipalities, counties, and townships is in compliance with the uniformity clause of a state constitution if it is applied uniformly throughout the state. If every county and township receives gasoline tax funds according to statutory formulas irrespective of their geographical location and the statutes do not affect fundamental interests or suspect classes, the fact that the statutory formula benefits smaller townships at the expense of larger townships does not render the statute unconstitutional.[7]

Footnotes

1 American Oil Co. v. Neill, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 (1965); Pierce Oil Corporation v. Hopkins, 264 U.S. 137, 44 S. Ct. 251, 68 L. Ed. 593 (1924); Bowman v. Continental Oil Co., 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921); City of Sedalia, ex rel. and to Use of Bauman v. Standard Oil Co. of Ind., 66 F.2d 757, 95 A.L.R. 1514 (C.C.A. 8th Cir. 1933).

2 Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932).

3 Archer Daniels Midland Co. v. State, 690 P.2d 177 (Colo. 1984); People v. Valley Steel Products Co., 71 Ill. 2d 408, 17 Ill. Dec. 13, 375 N.E.2d 1297 (1978).

4 V-1 Oil Co. v. Idaho State Tax Com'n, 134 Idaho 716, 9 P.3d 519 (2000).

5 Pierce Oil Corporation v. Hopkins, 264 U.S. 137, 44 S. Ct. 251, 68 L. Ed. 593 (1924).

6 American Oil Co. v. Neill, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 (1965).

7 Austintown Twp. Bd. of Trustees v. Tracy, 76 Ohio St. 3d 353, 1996-Ohio-74, 667 N.E.2d 1174 (1996).

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XXXIII. Gasoline Taxes

B. Validity

§ 532. Standing to challenge validity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3628, 3684

The user of gasoline or other motor fuels may question the constitutionality of a gasoline or motor fuel tax if the user can show that he, she, or it will be prejudiced by its enforcement.[1] Injuries that the consumer and user may suffer indirectly by the imposition of the tax are too remote to entitle the consumer to maintain an action to enjoin collection of such tax.[2] However, the fact that dealers in gasoline have passed a gasoline tax on to consumers does not estop the dealers from contesting the validity of the tax in an action by the State to recover the tax collected.[3]

Footnotes

1 Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934); Burlington Northern R. Co. v. Commissioner of Revenue, 606 N.W.2d 54 (Minn. 2000); King v. Baker, 69 N.D. 581, 288 N.W. 565, 125 A.L.R. 730 (1939).

2 Williams v. Riley, 280 U.S. 78, 50 S. Ct. 63, 74 L. Ed. 175 (1929); King v. Baker, 69 N.D. 581, 288 N.W. 565, 125 A.L.R. 730 (1939).

3 State v. Sunburst Refining Co., 76 Mont. 472, 248 P. 186, 47 A.L.R. 969 (1926).

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C. Liability and Payment

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3681 to 3685, 3703, 3704

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A.L.R. Index, Excise Taxes
A.L.R. Index, Gas and Oil
A.L.R. Index, Taxpayers
A.L.R. Index, Tax Sales
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Forms

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C. Liability and Payment

§ 533. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3681 to 3685

Gasoline taxes are typically imposed on the number of gallons of the product sold, purchased, used, or stored upon the distributor or dealer, who is given the right and privilege of passing the tax on to the consumer or user.[1] A domestic corporation selling gasoline in carload lots within the state may be held liable for a gasoline tax imposed upon distributors notwithstanding a provision in the contract fixing the price f.o.b. at a point without the state at which the seller procured gasoline for fulfilling the contract and from which shipments were made directly to purchasers.[2] A receiver appointed by a federal court for a corporation engaged in selling gasoline is subject to a gasoline tax imposed upon every "person, firm, or corporation."[3]

A gallonage tax imposed upon those engaged in the business of "selling or storing or distributing" gasoline, which is declared by the statute to apply to those storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether for sale or other use, reaches gasoline that is stored and thereafter withdrawn and used without being sold; that is, gasoline which the consumer purchases in interstate commerce, stores, and thereafter withdraws from storage for his or her own use.[4] A tax imposed upon "storers" of gasoline, who are defined as persons who ship gasoline, or cause it to be shipped, into the state in tank or drum quantities, after which it is stored or withdrawn or used for any purpose, cannot be evaded by a railroad company bringing in gasoline on its own line in less than full tank quantities and storing it in small receptacles.[5]

A municipal tax in the form of an occupation tax applicable to persons selling gasoline and transporting it in containers falls only on sales made within the municipal limits and not on sales made outside.[6] The fact, however, that deliveries of gasoline to which the tax applies are made outside the city limits does not invalidate a municipal ordinance imposing a license tax of a certain rate per gallon upon those engaged in the business of selling gasoline and transporting it through the city streets.[7]

CUMULATIVE SUPPLEMENT

Cases:

Requiring buyer of diesel fuel to pay the New Hampshire road toll when it already paid the Massachusetts fuel tax, given that the fuel was shipped from Massachusetts to New Hampshire, was not grossly inequitable and unfair; the situation arose only because buyer did not avail itself of the interstate mechanism in place to prevent such double payments, i.e., the International Fuel Tax Agreement (IFTA), and buyer, who was also a "distributor" for purposes of the road toll, had the obligation to collect and remit the road toll to New Hampshire. N.H. Rev. Stat. Ann. §§ 259:21, 260:32. Marco Petroleum Industries, Inc. v. Commissioner, New Hampshire Department of Safety, 117 A.3d 165 (N.H. 2015).

[END OF SUPPLEMENT]

Footnotes

[1] Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932); Texas Co. v. State, 31 Ariz. 485, 254 P. 1060, 53 A.L.R. 258 (1927); Miller v. People, 76 Colo. 157, 230 P. 603, 39 A.L.R. 269 (1924); Garrett Freight Lines v. State Tax Commission, 103 Utah 390, 135 P.2d 523, 146 A.L.R. 1003 (1943).

[2] Com. v. Wiloil Corp., 316 Pa. 33, 173 A. 404, 101 A.L.R. 287 (1934).

[3] Kansas City, Mo. v. Johnson, 70 F.2d 360 (C.C.A. 8th Cir. 1934).

[4] Foster & Creighton Co. v. Graham, 154 Tenn. 412, 285 S.W. 570, 47 A.L.R. 971 (1926).

[5] Ervin v. State of Alabama, 80 F.2d 432 (C.C.A. 5th Cir. 1935).

[6] City of Sedalia ex rel. and to Use of Ferguson v. Shell Petroleum Corp., 81 F.2d 193, 106 A.L.R. 1327 (C.C.A. 8th Cir. 1936).

[7] City of Sedalia, ex rel. and to Use of Bauman v. Standard Oil Co. of Ind., 66 F.2d 757, 95 A.L.R. 1514 (C.C.A. 8th Cir. 1933).

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C. Liability and Payment

§ 534. Effect of purpose or use

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3681

Although many of the early gasoline tax statutes apply only to gasoline used to propel vehicles over the highways, later statutes frequently apply to the use of all gasoline and motor fuels for any purpose.[1] Under such statutes, the tax may be exacted from those whose use of motor fuel is restricted to use on their own premises, even though the gasoline is purchased in other states and shipped into the state by tank car and delivered to the premises of the user in such cars, where it is emptied and placed in the user's own storage tanks.[2] Under a statute exempting fuels used for commercial purposes other than for propelling motor vehicles operated upon the highways, a contractor engaged in highway construction is entitled to a refund of money paid as gasoline taxes upon gasoline used to propel construction machinery over highways closed to public travel for purposes of the construction project.[3] A tax imposed upon motor fuel sold, used, or purchased for sale or use in the state applies whether or not the gasoline is used to propel motor vehicles over the public highways or for nonhighway purposes.[4]

A statute providing for refunds for taxes on purchases of gasoline or motor fuels when used for purposes exempted by the statute may be construed as creating a trust or special fund for refund purposes out of the proceeds collected and from which persons paying the tax are entitled to refunds.[5]

Footnotes

1 Western Waste Industries and Subsidiaries v. C.I.R., 104 T.C. 472, 1995 WL 217584 (1995); George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), aff'd, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931).

2 George E. Breece Lumber Co. v. Mirabal, 34 N.M. 643, 287 P. 699, 84 A.L.R. 827 (1930), aff'd, 283 U.S. 788, 51 S. Ct. 352, 75 L. Ed. 1415 (1931).

[3] Des Moines Asphalt Paving Co. v. Johnson, 213 Iowa 594, 239 N.W. 575 (1931).

[4] Ervin v. State of Alabama, 80 F.2d 432 (C.C.A. 5th Cir. 1935).

[5] Oregon-Washington R. & Nav. Co. v. Hoss, 128 Or. 347, 274 P. 314 (1929).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIII. Gasoline Taxes

C. Liability and Payment

§ 535. Municipalities and public authorities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3684

The fundamental policy of gasoline taxes is to place the burden of maintaining highways on those benefited by that maintenance.[1] Some gasoline tax statutes expressly exempt political subdivisions from the payment of such taxes.[2] Where statutes lack an express exemption provision, some jurisdictions take the view that municipalities and other such public bodies have no right to an implied exemption from gasoline excise taxes imposed upon those using motor fuels unless the statutory language indicates a legislative intent to exempt such bodies from the tax.[3] In such jurisdictions, the fact that a gasoline tax specifically exempts from its application the United States government and its agencies and departments, but is silent on exemptions of public agencies of the State, indicates a legislative intent to make the State taxable for gasoline purchased or used by it.[4]

There is, however, some authority for the view that such bodies are impliedly exempt from gasoline excise taxes in the absence of any expressed intention of the legislature to make them liable.[5]

Footnotes

1 Independent School Dist., Class A, No. 1, Cassia County, v. Pfost, 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931).

2 Com. v. Philadelphia Gas Works, 484 Pa. 60, 398 A.2d 942 (1979).

3 Independent School Dist., Class A, No. 1, Cassia County, v. Pfost, 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931); O'Berry v. Mecklenburg County, 198 N.C. 357, 151 S.E. 880, 67 A.L.R. 1304 (1930); Crockett v. Salt Lake County, 72 Utah 337, 270 P. 142, 60 A.L.R. 867 (1928).

[4] City of Fort Smith v. Watson, 187 Ark. 830, 62 S.W.2d 965 (1933).

[5] O'Berry v. Mecklenburg County, 198 N.C. 357, 151 S.E. 880, 67 A.L.R. 1304 (1930).

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XXXIII. Gasoline Taxes

C. Liability and Payment

§ 536. Collection and payment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3685

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 279 (Petition or application—To tax board or commission—For redetermination of additional fuel tax assessed on summary proceedings)

A State may impose an excise or use tax on motor fuel used or otherwise disposed of within the state and collect the tax not from the user but from the dealer or distributor, who is in effect made the agent of the state for that purpose.[1] Under such statutes, a dealer cannot escape liability for the tax by refusing to collect it from consumers.[2]

A statute that imposes a tax upon gasoline "sold, offered for sale, or used" applies to gasoline offered for sale, as well as to that sold or used, and the distributor becomes liable for taxes due the state before the gasoline is actually sold or used.[3] The money collected by the dealer, distributor, or wholesaler is money of the State held in trust for the State, and the State is therefore entitled to prior payment out of funds in the hands of the dealer's receiver.[4] Some statutes provide that the tax constitutes a first and prior lien against property of the dealer; such a statute is valid.[5]

Observation:

A retailer's personal use of gas tax receipts supported a conviction for grand theft where the gasoline retailer used county tax receipts to pay personal and business debts, and contended that the conviction was improper because the State had no possessory

interest in the funds but, rather, that the receipts were his personal property, and his failure to remit the proceeds to the government merely created a debtor/creditor relationship because the retailer acted as an agent for the State.[6]

Footnotes

1 Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934).

2 Miller v. People, 76 Colo. 157, 230 P. 603, 39 A.L.R. 269 (1924).

3 Shipe v. Consumers' Service Co., 28 F.2d 53 (N.D. Ind. 1928); People v. Texas Co., 85 Colo. 289, 275 P. 896 (1929).

4 Shipe v. Consumers' Service Co., 28 F.2d 53 (N.D. Ind. 1928).

5 People v. City and County of Denver, 85 Colo. 61, 273 P. 883 (1928).

6 Cash v. State, 628 So. 2d 1100 (Fla. 1993).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIII. Gasoline Taxes

C. Liability and Payment

§ 537. Remedies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3703, 3704

A court will not enjoin state officers from enforcing a gasoline tax at the instance of a dealer where the taxing statute provides that an aggrieved dealer should pay the tax under protest and bring action against the state treasurer to recover it.[1] On the other hand, a dealer may rely upon a governor's veto of a gasoline tax statute and cannot be penalized for failure to collect the tax when the veto is subsequently declared unconstitutional by the court.[2]

The absence of an express statutory provision providing for the reimbursement of motor vehicle fuel taxes paid by a distributor on behalf of a purchaser does not foreclose the distributor from resorting to appropriate equitable remedies where the distributor has paid the tax and failed to invoice the purchaser for it.[3] If a Native American school board, claiming that state gasoline taxes as applied violated federal law protecting Native American self-determination, is provided an adequate remedy under state law, it cannot maintain a federal civil rights action for injunctive or declaratory relief.[4]

Footnotes

1 Rio Oil & Supply Co. v. Duce, 85 Colo. 287, 275 P. 902 (1929).

2 Texas Co. v. State, 31 Ariz. 485, 254 P. 1060, 53 A.L.R. 258 (1927).

3 Wesson, Inc. v. Hychko, 205 Conn. 51, 529 A.2d 714 (1987).

4 Ramah Navajo School Bd., Inc. v. New Mexico Taxation & Revenue Dept., 127 N.M. 101, 1999-NMCA-050, 977 P.2d 1021 (Ct. App. 1999).

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XXXIII. Gasoline Taxes

C. Liability and Payment

§ 538. Recovery of illegal exactions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3703, 3704

Subsequent to the voluntary payment of a gasoline tax, neither a gasoline distributor or dealer[1] nor a purchaser has any remedy against the seller to recover the amount of the tax figured by the seller in fixing the selling price upon the subsequent declaration of invalidity of the statute.[2] A retail distributor cannot recover from a wholesale distributor to whom a gasoline tax, upon being declared invalid, had been refunded where the amount of the tax paid has been absorbed.[3] Where a dealer pays gasoline taxes under protest, however, under threat of statutory penalties, the dealer may recover the amount so paid if the statute is declared invalid,[4] particularly where the dealer seeks to recover it for the customers' benefit.[5]

Footnotes

1 Richardson Lubricating Co. v. Kinney, 337 Ill. 122, 168 N.E. 886 (1929).

2 Texas Co. v. Harold, 228 Ala. 350, 153 So. 442, 92 A.L.R. 523 (1933).

3 Texas Co. v. Harold, 228 Ala. 350, 153 So. 442, 92 A.L.R. 523 (1933).

4 Newlin v. Liberty Oil Co., 167 La. 831, 120 So. 383 (1929).

5 Benzoline Motor Fuel Co. v. Bollinger, 353 Ill. 600, 187 N.E. 657 (1933).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIV. Chain Store Taxes

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 2252, 3252

A.L.R. Library

A.L.R. Index, Excise Taxes
A.L.R. Index, Taxes
A.L.R. Index, Taxpayers
West's A.L.R. Digest, Taxation 2252, 3252

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XXXIV. Chain Store Taxes

§ 539. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2252, 3252

Statutes imposing taxes on chain stores, levying a fixed amount for each store in the chain, are constitutional in the absence of evidence of unreasonable, arbitrary, or capricious classifications made by the tax or to show that the tax was confiscatory in its operation.[1] Thus, the legislature may separately classify chain stores for taxation without contravening the Equal Protection Clause of the 14th Amendment to the United States Constitution.[2] State legislatures are given wide discretion in the classification of trades, callings, businesses, or occupations which may be subjected to special forms of regulation or taxation through an excise or license tax.[3] A statute imposing a tax for the privilege of operating a retail store, on each thousand dollars of value of the stock of goods carried in each store or for sale therein, at a higher rate than is imposed on stocks of goods carried by wholesale merchants, does not violate the Equal Protection Clause of the 14th Amendment.[4]

Differences in organization, management, and the type of business transacted, between the business of chain stores and other types of stores, are such as to justify the classification of such store organizations for purposes of taxation.[5] A state chain store tax levying an annual license tax upon each person engaged in the business of operating or maintaining a retail store which is part of a group or chain may apply to a foreign corporation.[6] Gasoline service stations and distributing plants may be considered "stores" within the meaning of such statutes.[7]

Chain store tax legislation does not constitute double taxation or deprive chain store employees of their liberty to contract.[8] Although there is some authority sustaining the validity of a tax based upon the gross receipts of chain stores,[9] license or occupation taxes upon chain stores, based upon the combined gross receipts from the business in such stores and graduated as the gross receipts from such stores within the state increase in amount, are invalid.[10]

A municipal corporation, if it has been delegated the power, may impose a chain store license tax[11] although where its taxing power is restricted by a provision that cities may license, tax, and regulate the occupations of merchants and graduate the amount of taxes imposed in proportion to sales made during the year, a municipal corporation may not impose a license tax graduated according to the number of stores operated rather than by the amount of sales made.[12]

Footnotes

[1] Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937); Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935) (West Virginia statute).

[2] Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937); State Board of Tax Com'rs of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536 (1931); City of Fredericksburg v. Sanitary Grocery Co., 168 Va. 57, 190 S.E. 318, 110 A.L.R. 1195 (1937).

[3] State Board of Tax Com'rs of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536 (1931); Brown-Forman Co. v. Commonwealth of Kentucky, 217 U.S. 563, 30 S. Ct. 578, 54 L. Ed. 883 (1910); Borregard v. National Transp. Safety Bd., 46 F.3d 944 (9th Cir. 1995).

[4] Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

[5] Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935); Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

[6] Jack Eckerd Corp. v. Collector of Revenue, 351 So. 2d 839 (La. Ct. App. 1st Cir. 1977).

[7] Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935).

[8] C. F. Smith Co. v. Fitzgerald, 270 Mich. 659, 259 N.W. 352 (1935).

[9] Penny Stores v. Mitchell, 59 F.2d 789 (S.D. Miss. 1932); Great Atlantic & Pacific Tea Co. v. City of Spartanburg, 170 S.C. 262, 170 S.E. 273 (1933).

[10] Great Atlantic & Pacific Tea Co. v. Valentine, 12 F. Supp. 760 (S.D. Iowa 1935), aff'd, 299 U.S. 32, 57 S. Ct. 56, 81 L. Ed. 22 (1936).

[11] City of Fredericksburg v. Sanitary Grocery Co., 168 Va. 57, 190 S.E. 318, 110 A.L.R. 1195 (1937).

[12] Kroger Grocery & Baking Co. v. City of St. Louis, 341 Mo. 62, 106 S.W.2d 435, 111 A.L.R. 589 (1937).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXIV. Chain Store Taxes

§ 540. Graduation by number of stores

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2252, 3252

The mere fact that a chain store tax imposed upon each store in a chain provides for a graduated tax increasing according to the number of stores in the chain does not violate constitutional principles.[1] The fact that the graduated tax is so large as to render unprofitable the operation of some of the units of the chain does not deny the owner equal protection of the laws or violate the guaranties of the Due Process Clause of the 14th Amendment.[2] If, in the interest of the people of the state, the legislature deems it necessary either to mitigate the evils of competition as between single stores and chains or to neutralize the disadvantages of small chains in their competition with larger ones, or to discourage merchandising within the state by chains grown so large as to become a menace to the general welfare, it is at liberty to regulate the matter by resort to this type of taxation.[3] A statute imposing such a graduated tax does not make an unreasonable classification merely because the tax imposed upon the operator of several stores may greatly exceed that imposed upon the operator of a single store doing an equal or greater amount of business,[4] and it does not unconstitutionally discriminate against chain stores under a single ownership in favor of department stores and individual store owners associating themselves in voluntary chains.[5] However, a graduated chain store tax law which imposes a greater tax per store where stores are located in more than one county than where they are all in the same county violates the Equal Protection Clause of the 14th Amendment because the classification lacks a reasonable basis.[6]

A municipal ordinance imposing a graduated license tax on chain stores is on its face a revenue and not a regulatory measure.[7]

Footnotes

[1] Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937); Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935).

[2] Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935).

[3] Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937).

[4] State Board of Tax Com'rs of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536 (1931).

[5] Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

[6] Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

[7] Kroger Grocery & Baking Co. v. City of St. Louis, 341 Mo. 62, 106 S.W.2d 435, 111 A.L.R. 589 (1937).

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Part Seven. Miscellaneous Special Taxes and Excises

XXXV. Stamp Taxes

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 2102, 2218

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West's A.L.R. Digest, Taxes 2102, 2218

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XXXV. Stamp Taxes

§ 541. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2102, 2218

"Stamp taxes" are taxes imposed on various types of instruments and documents and on various types of transactions evidenced by written memoranda.[1] Stamp taxes have four distinguishing characteristics: (1) they are imposed only at the time of the transfer or sale of the item at issue; (2) the amount due is determined by the consideration for, par value of, or value of the item being transferred; (3) the tax rate is a relatively small percentage of the consideration, par value, or value of the property; and (4) the tax is imposed irrespective of whether the transferor enjoyed a gain or suffered a loss on the underlying sale or transfer.[2] A deed is taxable only on the proportionate change in ownership which it actually effects; only the interest passing to persons other than the actual grantors is subject to the tax.[3]

In actions involving the transfer of property, documentary transfer taxes must be paid as a prerequisite to recording the transfer instruments.[4] A property transfer may be immune from the documentary stamp tax if it occurs as a result of an out-of-court settlement in a condemnation proceeding.[5]

CUMULATIVE SUPPLEMENT

Cases:

Conviction for failure to affix a drug tax stamp in drug prosecution in which the State presented no evidence relating to the existence or absence of tax stamps was plain error. State v. Magallanes, 284 Neb. 871, 824 N.W.2d 696 (2012).

[END OF SUPPLEMENT]

Footnotes

1 Broadnax v. State of Missouri, 219 U.S. 285, 31 S. Ct. 238, 55 L. Ed. 219 (1911); People of State of New York ex rel. Hatch v. Reardon, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907); Sablosky v. Messner, 372 Pa. 47, 92 A.2d 411 (1952).

2 In re 995 Fifth Ave. Associates, L.P., 963 F.2d 503 (2d Cir. 1992).

3 Baehr Bros. v. Com., 487 Pa. 233, 409 A.2d 326 (1979).

4 In re 995 Fifth Ave. Associates, L.P., 963 F.2d 503 (2d Cir. 1992).

5 Florida Dept. of Revenue v. Orange County, 620 So. 2d 991 (Fla. 1993).

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XXXV. Stamp Taxes

§ 542. Documents and transactions subject to tax

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2102, 2218

A documentary stamp tax may be imposed by state statute on instruments conveying an interest in real property to another party for consideration.[1] Conveyances of real estate that shift the economic burden from one party to the other may constitute sufficient consideration to warrant payment of a statutory documentary stamp tax.[2] A transfer of real property subject to an outstanding mortgage which is taken subject to the mortgage shifts the economic burden of paying the mortgage from seller to the buyer, and because the seller receives a benefit to the extent that it is relieved of its obligation to pay the mortgage, such a transfer of property is for consideration within the purview of a documentary stamp taxation statute.[3] In contrast, the execution of a quit-claim deed transferring real estate from a corporation to its stockholders, subject to an outstanding mortgage as to which the stockholders have previously entered into a guarantee agreement with the mortgagee, is immune from a documentary stamp tax statute where the stockholders pay no consideration and are already fully liable under the guarantee agreement for payment of the mortgage debt.[4]

Footnotes

1 Department of Revenue v. Dix, 362 So. 2d 420 (Fla. 1st DCA 1978).

2 Andean Inv. Co. v. State, Dept. of Revenue, 370 So. 2d 377 (Fla. 4th DCA 1978).

3 Florida Dept. of Revenue v. De Maria, 338 So. 2d 838 (Fla. 1976).

4 Straughn v. Story, 334 So. 2d 337 (Fla. 1st DCA 1976).

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XXXV. Stamp Taxes

§ 543. Illegal drug stamp laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2102, 2218

A.L.R. Library

Validity, construction, and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics, 12 A.L.R.5th 89

Drug tax stamp laws require that stamps be purchased and affixed to and displayed on illegal drugs.[1] Raising revenue and discouraging illegal drug trafficking are legitimate legislative objectives for the purpose of determining whether an illegal drug stamp tax act violates the constitutional requirement of uniform operation of laws.[2] Illegal drug tax stamp laws do not violate the Commerce Clause of the United States Constitution because contraband is not an object of interstate trade protected by the Commerce Clause.[3]

To conform to the privilege against self-incrimination guaranteed by the Fifth Amendment to the United States Constitution, an illegal drug stamp tax act must preclude prosecutors from using any information gained as a result of a stamp purchaser's compliance with such act to establish a link in the chain of evidence in a subsequent drug prosecution.[4] A statute proscribing the distribution of a taxable substance without a drug tax stamp does not violate a defendant's Fifth Amendment right against self-incrimination if the statute contains sufficient procedural safeguards to prevent disclosure of the defendant's own criminal activity,[5] even if the statute creates a "Catch-22" situation wherein any defense to such charge requires admission of possession of illegal drugs, so long as anyone may purchase such stamp so that proof of the stamp's presence on the drugs does not prove that the defendant purchased the stamp or affixed it to the drugs.[6]

A criminal conviction for possession of a controlled dangerous substance without a tax stamp can be supported by circumstantial evidence of constructive possession.[7]

Footnotes

1 State v. White, 545 N.W.2d 552 (Iowa 1996); State v. Hall, 207 Wis. 2d 54, 557 N.W.2d 778 (1997).

2 Predka v. Iowa, 186 F.3d 1082 (8th Cir. 1999); State v. Ryan, 501 N.W.2d 516 (Iowa 1993); State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993); Zissi v. State Tax Com'n of Utah, 842 P.2d 848 (Utah 1992); State v. Hall, 207 Wis. 2d 54, 557 N.W.2d 778 (1997).

3 Predka v. Iowa, 186 F.3d 1082 (8th Cir. 1999).

4 Zissi v. State Tax Com'n of Utah, 842 P.2d 848 (Utah 1992); State v. Hall, 207 Wis. 2d 54, 557 N.W.2d 778 (1997).

5 State v. Gallup, 500 N.W.2d 437 (Iowa 1993).

6 White v. State, 1995 OK CR 15, 900 P.2d 982 (Okla. Crim. App. 1995).

7 State v. Welch, 507 N.W.2d 580 (Iowa 1993); Hill v. State, 1995 OK CR 28, 898 P.2d 155 (Okla. Crim. App. 1995).

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John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Seven. Miscellaneous Special Taxes and Excises

XXXVI. Stock Transfer Taxes

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 2102, 2218

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A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 2102, 2218

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71 Am. Jur. 2d State and Local Taxation § 544

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Part Seven. Miscellaneous Special Taxes and Excises

XXXVI. Stock Transfer Taxes

§ 544. Generally; validity

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2102

Taxes on the issuance and transfer of corporate stock, commonly known as "stock transfer taxes" and payable by means of stamps, do not violate the Due Process and Equal Protection Clauses of the 14th Amendment, although no tax is imposed on the transfer of other kinds of personal property, where there is no discrimination between different kinds of stock, and the tax applies equally to all persons and in all parts of the state.[1] Taxes on the transfer of corporate stock may be constitutional although the method provided for their computation is not based on the actual value of the shares transferred.[2] The tax is an excise tax[3] and may be computed on the basis of the face value of the shares transferred[4] or on the number of shares transferred.[5]

Practice Tip:

In assessing the value of withdrawing a shareholder's stock, it may be necessary to consider capital gains tax liabilities that the corporation would incur if it were to sell appreciated real estate to pay the shareholder for such stock where the corporation could not have borrowed the money to pay the shareholder or used a tax-free split-off transaction to transfer assets to the shareholder.[6]

Footnotes

[1] People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), aff'd, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415

(1907).

2 Vaughan v. State, 272 N.Y. 102, 5 N.E.2d 53, 108 A.L.R. 950 (1936).

3 Eyler v. C.I.R., 88 F.3d 445 (7th Cir. 1996); People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), aff'd, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

4 People of State of New York ex rel. Hatch v. Reardon, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

5 Vaughan v. State, 272 N.Y. 102, 5 N.E.2d 53, 108 A.L.R. 950 (1936).

6 Bogosian v. Woloohojian, 158 F.3d 1 (1st Cir. 1998).

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XXXVI. Stock Transfer Taxes

§ 545. Transfers by nonresidents

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West's Key Number Digest

West's Key Number Digest, Taxation 2218

A State may tax the transfer within its borders of certificates of stock issued by a foreign corporation and owned by nonresidents without interfering with the Commerce Clause of the United States Constitution.[1] However, a state transfer tax statute which imposes a higher tax on in-state transfers of securities resulting from out-of-state sales than those resulting from in-state sales is unconstitutional as discriminating against interstate commerce in violation of the Commerce Clause where the statute neither neutralizes any competitive advantage of out-of-state stock exchanges under the taxing state's laws nor compensates for a like burden on in-state sales but instead creates both an advantage for in-state stock exchanges and a discriminatory burden on interstate commerce.[2]

Footnotes

1 People of State of New York ex rel. Hatch v. Reardon, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

2 Boston Stock Exchange v. State Tax Commission, 429 U.S. 318, 97 S. Ct. 599, 50 L. Ed. 2d 514 (1977).

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§ 546. Liability for tax; taxable transfers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 2218

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State Income Tax Treatment of Intangible Holding Companies, 11 A.L.R.6th 543

Generally, the scheme of the tax statutes is to tax a transfer of stock, whether executory or executed, by stamps to be affixed to those writings and those writings only which are in a practical sense the repository of the agreement or the instruments or vehicles for the ensuing change of title.[1] A state statute imposing a stamp tax on all sales, agreements to sell, memoranda of sales, or deliveries or transfers of shares or certificates of corporate stock subjects to taxation a transfer of stock certificates issued by a foreign corporation and owned by a nonresident, but made within the state,[2] but mere copies of memoranda ancillary to transfers consummated outside the state are not taxable.[3] There is authority for the view that, under a state statute taxing the issuance of securities, the statutory provisions apply only to an original issuance of the stock by which the corporation either acquires money or property in consideration thereof or capitalizes some or all of its earned surplus, and not to a mere transformation of the existing and outstanding issued stock, by way of reclassification, split-up, or exchange of par-value stock for no-par-value stock, or one class of stock for another class, whereby the corporation does not acquire any new capital or add any of its earned surplus to its capital account.[4]

A transfer of shares of stock takes place at the time when a contract for their sale is delivered, although the sale is for shares to be delivered in installments, where, in the meantime and until default, the certificates are to be indorsed in blank and delivered in escrow, and the transfer tax stamps must be affixed to the certificates of stock at the time of their delivery in escrow.[5] An order to sell stock, delivered by a customer to the branch office of a brokerage firm, is not, before it is executed, taxable as an "agreement to sell" because there is no agreement to sell until the selling broker and the buying one come together and make a contract.[6]

CUMULATIVE SUPPLEMENT

Cases:

City tax appeals tribunal's determination, that taxpayer limited liability company (LLC) was not entitled to "mere change in form of ownership" exemption from real property transfer tax with respect to consideration that LLC received for its tenant-in-common interest in real property, was both rationally based and supported by substantial evidence; in series of related transactions, all of which took place in one day, LLC contributed its interest to new LLC and then sold its membership interest in new LLC to former co-tenant-in-common, thus giving rise to inference that LLC had no intention of retaining any beneficial ownership of property in question or of rights to profits and cash flow derived from that real property or from new LLC. GKK 2 Herald LLC v. City of New York Tax Appeals Tribunal, 154 A.D.3d 213, 63 N.Y.S.3d 20 (1st Dep't 2017).

[END OF SUPPLEMENT]

Footnotes

1 Lee v. Bickell, 292 U.S. 415, 54 S. Ct. 727, 78 L. Ed. 1337 (1934).

2 People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), aff'd, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

3 Lee v. Bickell, 292 U.S. 415, 54 S. Ct. 727, 78 L. Ed. 1337 (1934).

4 Interstate Iron & Steel Co. v. Stratton, 340 Ill. 422, 172 N.E. 705 (1930); Lake Superior Dist. Power Co. v. Public Service Com'n, 250 Wis. 39, 26 N.W.2d 278, 170 A.L.R. 680 (1947).

5 Phillips v. Grossman, 76 Misc. 497, 135 N.Y.S. 567 (App. Term 1912).

6 Lee v. Bickell, 292 U.S. 415, 54 S. Ct. 727, 78 L. Ed. 1337 (1934).